*** THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

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+ WRIT PETITION NO. 1600 of 2003

% 03-08-2005

Kolluru Gopal PETITIONER

VS.

$ Visakhapatnam Municipal Corporation ..RESPONDENTS

! COUNSEL FOR PETITIONER: MR.Vedula Venkataramana

^ Counsel for the Respondents: Government Pleader for Municipal Administration.

< Gist:

> Head Note:

? CITATIONS:

1. (1983) 4 SCC 392

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.1600 OF 2003

ORDER :

1. The petitioner filed this writ petition with a prayer to issue a Writ of Mandamus declaring the action of the respondent- Corporation in issuing the final notification dated 14.2.2002 under section 3 of A.P.Slum Improvement (Acquisition of Land) Act, 1956 (for short Act) purporting to acquire land in T.S.No.266 and 270/1A Part of Market yard, Block No.9, Periki Veedhi, Visakhapatnam as arbitrary, illegal and contrary to the provisions of the Act. The petitioner got additional prayer included as per the orders in WPMP.No.32026 of 2003, dated 20-1-2004. The additional relief sought for is to declare the order of the respondent-Corporation in Rc.No.1185/89/H3/UCDP, dated 31.1.2002 rejecting the objections of the petitioner and acquiring the subject land under the provisions of the Act as illegal.

2. The petitioner claims that he is the absolute owner and possessor of 1066 square yards in T.S.No.270/1A (Part) and T.S.No.266 (Part) of Market Ward, of Block No.9, Periki Veedhi, Visakhapatnam, having purchased the same under three registered sale deeds dated 22-2-1944, 10-3-1945 and 10-3-1951. The respondent-Corporation declared an extent of 531 square yards covered by T.S.No.266 part and an extent of 406 yards covered by T.S.No.270/1A as ‘slum’ and published a notice under Section 3(1) of the Act in Gazette dated 20.8.1990. A show cause notice under section 3(2) of the Act was issued to the petitioner to show cause as to why the slum area should not be acquired for its improvement. The petitioner filed

objections to the show cause notice and simultaneously filed W.P.No.11650 of 1991 questioning the notice issued under section 3(2) of the Act. The said writ petition ended in dismissal on 8.6.2001. He unsuccessfully filed W.A.No.925 of 2001. He contended in the writ appeal that the provisions of the Act could not be made applicable to the respondent-Corporation in the absence of any notification extending the provisions of the Act to the respondent-Corporation. The contention came to be repelled by a Division Bench of this court in the aforesaid writ appeal. I deem it appropriate to refer the relevant portion of the order passed in the writ appeal and it is thus:

> " The submission of the learned counsel to the effect that as the amendment to Section 1(3) of the Act as regards the municipal Corporation was inserted later on, it must be held, that prior thereto no notification could be issued extending the provisions of the slum area Act to Municipal Corporation cannot be accepted. Prior to the establishment of the Corporation, the Visakhapatnam Municipality was exercising the power under the said Act and such statutory power in terms of the transitional provisions under Section 8 of the Visakhapatnam Municipal Corporation Act stood transferred to the Municipal Corporation. The amendment made in Section 1(3) of the said Act in the year 1981 was only by way of abundant caution as by that time several municipal corporations came into being in the State. Only because such amendment took place in the year 1981, it cannot be said that prior thereto, the Municipal Corporation had no authority to enforce the provisions of the slum area Act nor can it be said that despite the fact that it used to enjoy the said power in terms of section 8 of the Corporation Act, it will cease to have any effect.
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> We may notice that in terms of Article 243-D of the Constitution of India, the Municipality includes "Municipal corporation". Further more, if any power exercised by a statutory body stood transferred to a newly constituted statutory body by reason of a statutory provision in our considered opinion, it is not necessary to issue a fresh notification for exercise of such power by the newly established statutory body.

Further, the Municipal Corporation in the counter filed by the 2nd respondent disputes the ownership of the appellant to the extent of 531 square yards situate in T.S.No.266 part and it was categorically stated that the said land belongs to the Municipal Corporation. This court, exercising the jurisdiction under Article 226 of the Constitution of India cannot go into such disputed questions of fact.

For the reasons aforesaid, we are of the opinion that there is no merit in this Appeal, which is accordingly dismissed. There shall be no order as to costs."

3. The petitioner also filed Special Leave Petition (C.No.18770 of 2001) and the said petition came to be dismissed as withdrawn. The petitioner filed O.S.No.743 of 1991 on the file of III Additional District Munsif, Visakhapatnam against 28 hut dwellers residing in the area in question seeking permanent injunction restraining them from putting up further constructions. The said suit also ended in dismissal on 26.9.1997. The Commissioner and competent authority after perusing the connected records and documents filed by the petitioner and after inspecting the slum on 25.10.2001 passed final orders on 31.12.2002 over-ruling the objections raised by the petitioner. Hence, this writ petition.

4. It is stated in the counter affidavit that show cause notice was issued to the petitioner and thereupon the petitioner filed objections which were duly considered and final orders came to be passed on 31.12.2002 over-ruling the objections of the writ petitioner. It is further stated in the counter that the provisions of the Act came to be invoked to develop the area by providing basic amenities and sanitation to the residents of the area taking into consideration the miserable plight of the slum dwellers. It is further stated that the land in T.S.NO.266 belongs to respondent-Corporation and the petitioner is in no way concerned with it. Para 8 of the counter needs to be noted and it is thus:

" 8. In reply to paragraph-6, it is submitted that the Commissioner and Competent Authority under the Act, after perusing the objection petition of the Writ Petitioner and the connected records, passed final orders u/s 3(2) of A.P.Slum Improvement (Acquisition of Land) Act, 1956 vide this office proceedings Rc.No.1185/89/H3, dated 31.1.2002. Further the notice u/s 3(2) was already published in Visakhapatnam District Gazette dt.14.2.2002. Further by virtue of Section 3(3) of the said Act, once the Notice is published in A.P.Gazette on and from the beginning of the day on which the Notice is published, the Schedule land absolutely vests with the Government free from all encumberances. In view of the issuance of Notification u/s 3(2) of the Act in the Visakhapatnam District Gazette dt.14.2.2002, the Hon'ble High Court of Andhra Pradesh has rightly dismissed the Writ Petition No.25374 of 2002 of the same Writ petitioner as "INFRUCTUOUS" at admission stage itself."

5. Heard learned counsel appearing for the petitioner and learned Standing Counsel appearing for the respondent- Corporation.

6. Learned counsel appearing for the petitioner submits that the very declaration of the area as 'slum' is not bonafide and it is motivated and therefore such a declaration published under section 3(1) of the Act is required to be declared as null and void. He further submits that the competent authority has not given sufficient opportunity to the petitioner to represent his case and thus the order impugned in the writ petition is in violation of the principles of natural justice. He would further contend that the objections raised by the petitioner were not properly considered and the competent authority had not applied his mind.

7. Learned Standing Counsel appearing for the respondent-

Corporation submits that the petitioner resorted to filing number of writ petitions to stall the acquisition proceedings under the Act and the instant writ petition is one among them. He would further submit that the competent authority has taken into consideration the pathetic condition of the inhabitants of the area in question and declared it as slum and thereafter initiated the proceedings for acquisition of the same. His further submission would be that the competent authority dealt the objections filed by the writ petitioner in great detail and repelled the same by giving cogent and convincing reasons and therefore the impugned order does not suffer from any infirmities warranting interference of this court.

8. It is a matter of record that the writ petitioner questioned the very application of the provisions of the Act to the area in question in the earlier writ petitions and the writ petitions filed by him ended in dismissal. He unsuccessfully carried the matter in writ appeal. The principal contention of the learned counsel appearing for the petitioner is that the declaration of the area as slum is motivated and the same is not required to be declared as such in view of its location in prime area. I do not see any substance in his contention in view of the fact that about 28 persons are residing in the area in question by raising huts without any public latrines, etc. This fact is evident in the impugned order dated 31.1.2002. It appears the area in question is located in a very congested locality with heavy density and overcrowded population and it is full of dirt, tilt and turmoil and the inhabitants therein are lacking basic amenities. The competent authority has considered this aspect before declaring the area in question as a slum. I do not see any flaw in the conclusion arrived at by the competent authority in declaring the area as a ‘slum’.

9. Learned counsel appearing for the petitioner submits that the objections filed by the writ petitioners have not been properly dealt with and no sufficient opportunity was given to the writ petitioner to

substantiate his objections. Few facts are required to be noted at this juncture. When the competent authority issued show cause notice to the petitioner he submitted objections to show cause notice and also moved High Court by filing a writ petition and obtained interim stay of further proceedings on 12.9.1991. Ultimately the writ petition filed by him being W.P.No.925 of 2001 ended in dismissal on 11.6.2001. He unsuccessfully filed the Writ Appeal and the same ended in dismissal on 29.6.2002. When the competent authority took up the enquiry in pursuance of the show cause notice, the son of the petitioner appeared and submitted representations along with certain documents.

10. In COMMISSIONER OF INCOME TAX, BOMBAY AND OTHERS v. MAHINDRA AND MAHINDRA LIMITED AND OTHERSthe Supreme Court while stating the parameters of the court's power of judicial review of administrative or executive action or decision and the grounds on which the Court can interfere with the same or well settled, proceeded to say further in para 11, thus:

> " 11……Indisputably, it is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same."

In the same decision it is also stated that in examining the validity of an order in such matters the test is to see whether there is any infirmity in the decision making process and not the decision itself. From this decision it is also clear that when choices are open to the authority it is for that authority to decide upon the choice and not for

the Court to substitute its view.

11. The competent authority proceeded to discuss the objections in great detail. Findings have been recorded by the competent authority on every objection raised by the petitioner. There is no manner of doubt to conclude that sufficient opportunity has been given to the petitioner to submit his objections to the show cause notice issued under proviso to Section 3(2) of the Act. Therefore, I do not see any substance in the contentions of the learned counsel for the petitioner that the petitioner was not given opportunity before passing the impugned order.

12. In the result, this writ petition is devoid of merits and it is hereby dismissed. No costs.

Dated: 03-08-2005. (B.Seshasayana Reddy, J)

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